

NOTICE OF INTENT

Department of Environmental Quality
Office of Environmental Assessment
Environmental Planning Division

Cooling Water Intake Structures for New Facilities
(LAC 33:IX.2522, 2523, and 2524) (WQ051*)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Water Quality regulations, LAC 33:IX.2522, 2523, and 2524 (Log #WQ051*).

This proposed rule is identical to federal regulations found in 40 CFR 125.83; 125.84(b)(4)(ii)-(iii), (b)(5)(ii), (c)(3)(ii)-(iii), and (d)(1); and 125.85(a)(2)-(3), which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3550 or Box 4314, Baton Rouge, LA 70821-4314. No fiscal or economic impact will result from the proposed rule; therefore, the rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This amendment deletes the definition of Minimum Ambient Source Water Surface Elevation and provides owners and operators of new facilities with clarified and additional requirements for addressing various stressors and other adverse impacts on species passing through the hydraulic zone of influence of cooling water intake structures. The amendments are required to maintain currency with federal regulations for state program authorization. The basis and rationale for this rule are to mirror the federal regulations, to ensure the application of relevant information, and to protect species integrity.

This proposed rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

A public hearing will be held on October 27, 2003, at 1:30 p.m. in the Galvez Building, Room C111, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Lynn Wilbanks at the address given below or at (225) 219-3550. Free parking is available across the street in the Galvez parking garage when the parking ticket is validated by department personnel at the hearing.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by WQ051*. Such comments must be received no later than October 27, 2003, at 4:30 p.m., and

should be sent to Lynn Wilbanks, Regulation Development Section, Box 4314, Baton Rouge, LA 70821-4314 or to FAX (225) 219-3582 or by e-mail to lynnw@ldeq.org. The comment period for this rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of WQ051*.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/planning/regs/index.htm>.

James H. Brent, Ph.D.
Assistant Secretary

Title 33
ENVIRONMENTAL QUALITY
Part IX. Water Quality

Chapter 23. The LPDES Program

Subchapter M. Criteria Applicable to Cooling Water Intake Structures Under Section 316(b) of the Act

§2522. What Special Definitions Apply to this Subchapter?

Minimum Ambient Source Water Surface Elevation—~~repealed, the elevation of the 7Q10 flow for freshwater streams or rivers, the conservation pool level for lakes or reservoirs, or the mean low tidal water level for estuaries or oceans. The 7Q10 flow is the lowest average seven consecutive day low flow with an average frequency of one in ten years determined hydrologically. The conservation pool is the minimum depth of water needed in a reservoir to ensure proper performance of the system relying upon the reservoir. The mean low tidal water level is the average height of the low water over at least 19 years.~~

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:1768 (August 2002), LR 29:

§2523. As an Owner or Operator of a New Facility, What Must I Do to Comply with this Subchapter?

A.—B.4.a. ...

b. based on information submitted by any fishery management agency(ies) or other relevant information, there are migratory and/or sport or commercial species of impingement concern to the state administrative authority ~~or any fishery management agency(ies)~~ that pass through the hydraulic zone of influence of the cooling water intake structure; or

c. it is determined by the state administrative authority, based on information submitted by any fishery management agency(ies) or other relevant information, ~~or any fishery management agency(ies)~~ that the proposed facility, after meeting the technology-based performance requirements in Paragraphs B.1, 2, and 3 of this Section, would still contribute unacceptable stress to the protected species, critical habitat of those species, or species of concern.

5.—5.a. ...

b. based on information submitted by any fishery management agency(ies) or other relevant information, there are, or would be, undesirable cumulative stressors affecting entrainable life stages of species of concern to the state administrative authority ~~or any fishery management agency(ies)~~, and it is determined by the state administrative authority ~~or any fishery~~

~~management agency(ies)~~ that the proposed facility, after meeting the technology-based performance requirements in Paragraphs B.1, 2, and 3 of this Section, would still contribute unacceptable stress to the protected species, critical habitat of those species, or to these species of concern.

B.6.—C.3.a. ...

b. based on information submitted by any fishery management agency(ies) or other relevant information, there are migratory and/or sport or commercial species of impingement concern to the state administrative authority ~~or any fishery management agency(ies)~~ that pass through the hydraulic zone of influence of the cooling water intake structure; or

c. it is determined by the state administrative authority, based on information submitted by any fishery management agency(ies) or other relevant information, ~~or any fishery management agency(ies)~~ that the proposed facility, after meeting the technology-based performance requirements in Paragraphs C.1 and 2 of this Section, would still contribute unacceptable stress to the protected species, critical habitat of those species, or species of concern.

C.4.—D.1. ...

a. Except as specified in Subparagraph D.1.b of this Section, this demonstration must include a showing that the impacts to fish and shellfish, including important forage and predator species, within the watershed will be comparable to those that would result if you were to implement the requirements of Paragraphs B.1 and 2 of this Section. This showing may include consideration of impacts other than impingement mortality and entrainment, including measures that will result in increases in fish and shellfish, but it must demonstrate comparable performance for species that the state administrative authority, in consultation with national, state, or tribal fishery management agencies with responsibility for fisheries potentially affected by your cooling water intake structure, identifies as species of concern. In identifying such species, the state administrative authority may consider information provided by any fishery management agency(ies) along with data and information from other sources.

D.1.b.—E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:1769 (August 2002), LR 29:

§2524. May Alternative Requirements Be Authorized?

A.—A.1. ...

2. the state administrative authority determines that data specific to the facility indicate that compliance with the requirement at issue would result in compliance costs wholly out of proportion to those EPA considered in establishing the requirement at issue or would result in significant adverse impacts on local air quality, significant adverse impacts on local water resources ~~not addressed under LAC 33:IX.2523.D.1.a~~ other than impingement or entrainment, or significant adverse impacts on local energy markets;

3. the alternative requirement requested is no less stringent than justified by the wholly out of proportion cost or the significant adverse impacts on local air quality, significant adverse impacts on local water resources ~~not addressed under LAC 33:IX.2523.D.1.~~ other than impingement or entrainment, or significant adverse impacts on local energy markets; and

A.4.—B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:1771 (August 2002), LR 29: